

PLANNING COMMISSION MINUTES

July 21, 1999

CALL TO ORDER: Chairman Maks called the meeting to order at 7:04 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

Present were Chairman Dan Maks; Planning Commissioners Charles Heckman, Tom Wolch, Vlad Voytilla, and Eric Johansen. Commissioners Sharon Dunham and Don Kirby were excused.

Staff were represented by Senior Planner Veronica Smith, Principal Planner Ali Turiel, and Project Engineer Jim Duggan.

Chairman Maks opened the public hearing and read the format for the meeting.

OLD BUSINESS

CONTINUANCE

A. VAR96015 - NEW BEAVERTON LIBRARY; PARKING VARIANCE

(Continued from July 14, 1999)

The City Council has remanded the variance request to the Planning Commission so that the Commission can take action on a revised variance request at a public hearing on June 23, 1999. The City proposes to meet the Development Code standards for parking, and expects to be able to withdraw the variance once approval of the west parking lot is final. The site is within the R-1 (High Density Multi-Family Residential) zone. The site is located between SW Third and Fifth Streets, east of Hall Boulevard, and on both sides of Tucker Avenue. The site is approximately 4.5 acres in size. Map 1S1-15BC; Tax Lots 6300, 9300 & 9500.

Chairman Maks reported the applicant for VAR96015, New Beaverton Library Parking Variance, requested in writing that the application be withdrawn.

NEW BUSINESS

PUBLIC HEARING

A. CUP99003 - GRAMOR MURRAY SCHOLLS

(Request for continuance to August 4, 1999)

Request for a Conditional Use Permit approval for a Planned Unit Development (PUD) on 21.2

acres of the former PGE site on the northwest corner of SW Murray Boulevard and SW Scholls Ferry Road. The PUD request is to be in multiple phases to include proposed retail, office uses, restaurants, and approximately 20 townhomes on the northeast corner of the site. Proposed access points include one on SW Murray Boulevard and three on SW Scholls Ferry Road. The applicant also requests Design Review approval for approximately 165,250 square feet of the commercial use center. The Design Review request includes review of nine new buildings and one existing building to be remodeled. The development proposal is on Tax Lots 100 and 800 of Assessor's Map 1S1-32DA and is zoned Town Center – Sub Regional. The site is within the R5, TC-SR, LI zone. Map 1S1-32DA; Tax Lots 100, 500, 700 & 800, and Map 1S1-32AD; Tax Lots 800 & 900.

Commissioner Heckman MOVED and Commissioner Voytilla SECONDED a motion to continue CUP99003, the Gramor Murray Scholls application for continuance to August 4, 1999 at 7:00 p.m. in the Council Chambers. The question was called and the motion CARRIED unanimously.

WORK SESSION – TITLE 3

Ms. Smith, Associate Planner, presented information regarding implementation of Title 3. The file number was CPA99-00015 and TA99-00006, Title 3, Water Quality and Flood Management. She introduced a memo and two letters, one from the Mayor dated July 21 to Bill Gaffe, the other dated July 20 from Metro with their response to substantial compliance. It was addressed to the Honorable Tom Brian and all the mayors. The July 19th memo was from Elaine Wilkerson, Director of Metro Growth Management Services. They reviewed the substantial compliance recommendations and pointed out areas of non-compliance.

The report which is called the Green Report has been a six month project worked on by all ten jurisdictions with representation through the Washington County Planning Directors and a staff member from USA to collectively, through USA standards, implement Title 3. Specifically the water quality and erosion control aspects of Title 3. The committee went to the public and various stakeholders and did presentations of four initial options. After public input and further discussion, the committee decided to recommend implementation of Option 3 with modifications based on the input from the public, Metro and the stakeholders. From this recommendation a report was issued, the Metro Title 3 Substantial Compliance Recommendation, dated June 16. It was presented to the Washington County Planning Directors Group who indicated that it should be reviewed by other jurisdictions, returned to them, and comments would be sent to USA.

In the interim, USA's leadership team met. Their objective was to move this forward to meet the December 18 compliance date that Metro established. On June 18 all of the jurisdictions had to provide a status report to Metro on Title 3. This was part of the Title 8 Substantial Compliance Report which required a letter be sent by that date. The City responded with a letter dated June 17 with an outline for implementation of Title 3 and a request for an extension to complete the process until July 2000. A lot of jurisdictions sent letters stating they were implementing Title 3 by working with USA. The Mayor's letter did not state that, it simply

stated the time schedule for implementation, since Council had not reviewed Title 3 USA program recommendations.

Staff only makes recommendations and could not recommend supporting or implementing the Green Book until the Planning Commission and City Council had the opportunity for review to determine if this is the approach the City would like to take. We can work with USA to look at some policies and see how to implement this but finite items regarding how the implementation is completed need to be reviewed. A review of the mitigation table and certain elements of the report need to be studied and discussed in detail.

The concern about the USA leadership team moving ahead with implementation is that they have not heard any specifics from any of the jurisdictions. We need time to review their draft before they finalize and adopt it so the Mayor wrote the letter dated July 21 indicating that we need some clarification regarding implementation. We want the opportunity to review and make revisions deemed appropriate and in the best interests of the City.

The Commission reviewed the presentation following the outline on Page 2 of the memo.

In order to implement Title 3 we need to consider if we are going to meet substantial compliance. Metro defines substantial compliance. It indicates that it conforms with purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements of a technical and minor nature. Any variations that are more than minor require Metro Council approval. Elaine Wilkerson indicated that the "Green Book" has more than a minor variation. Specifically, the mitigation table, and Metro Council, will have to approve the recommendation in the report.

Elaine has indicated in her letter that we meet erosion control compliance and do not have to make any changes in that aspect. In flood management, A & B areas will need to be reviewed. Jim Duggan has indicated that we are in compliance with Flood Management and these areas will not need to be addressed. Hazards is one area that will need amending language and support with the comprehensive plan. In flood management and erosion control areas we will have no problem meeting substantial compliance.

Areas where USA design and construction standards meet compliance: We have an intergovernmental agreement to uphold USA standards. Within their rules they have standards with erosion control and they coincide with our erosion control standards. Ours are more restrictive and also include utility repair. We can rely on USA standards to meet compliance in this section of Title 3.

Key elements to identify that USA report recommends, USA adopt the setback requirements, 15 feet, 50 and 200 foot setbacks. The committee is encouraging USA to adopt #4 and the mitigation table on Pages 13 and 14 of the report. It is unclear whether USA will adopt the mitigation table. If USA adopts the 15, 50 and 200 foot setback standards and not the mitigation table and we adopt that into our standards, it will not be done in tandem. It might be a month or two later after the hearing process and it would not be consistent because some

jurisdictions might not adopt it. The whole idea is to have consistent policy. We need to continue to suggest that USA place this in their standards and limit the credits. For example, if the mitigation table allowed for storm drain disconnects and the soils are tight, it might work in some areas but maybe not in the City of Beaverton. If we allowed someone to consider that option we might want a standard such as engineer certification is required or we might not want to allow it at all. The mitigation table would be included in USA standards but we could be more restrictive if we chose to be. The other area that needs to be in their area of responsibility is some wording with regard to stabilizing slopes and requiring a geotech report. The environmental community does not find this credible and objects from the standpoint that an arborist can tell you what you want to hear about trees and a geotech can tell you what you want to hear about stabilization. Those are exceptions. These rules should work in terms of professionalism.

The areas that Beaverton should implement is the Comprehensive Plan to support Title 3 and the objectives to protect the water quality of these source areas. It was suggested that we adopt USA standards directly into our code. We have to fill in the gaps with development code or engineering code to implement the gaps that USA does not adopt. We need to move forward with USA standards and then adopt our standards to supplement that and meet substantial compliance.

The difference between what USA is proposing and what Metro understands to be the concept of averaging, is not expressly permitted by Title 3. The variance provisions in Metro's model ordinance allow a vegetative corridor with reduction to a minimum of 30 feet over 25 percent of the corridor similar to the proposed approach. Any averaging of the vegetative corridor needs to be applied on an application by application determination as part of the alternative analysis allowed in the Metro Code, therefore this portion of the proposed approach substantially complies with Title 3. This is in relationship to slopes of less than 25 percent. In slopes of greater than 25 percent, we are considering a 200 foot setback. The mitigation is proposing that we allow encroachment to a minimum of 100 feet. This is considered a 50 percent reduction in the setback and is more than a minor adjustment which would require Metro's approval. Variance provisions and alternative analysis is another step in the development process. The recommendation is proposing a one-step process for a Type 2 or 3 development where an area is mitigated for encroachment. This would be part of the design review and would not require an application for a variance. Metro wants some level of review and in order to receive the mitigation you must demonstrate as an alternative analysis that there is no other alternative. With us if you can demonstrate that you have a degraded corridor we will get restoration from the corridor for the first 25 feet and by creating that nexus will allow the encroachment through the one-step review process avoiding a variance. This is the difference with Metro. They want to make it onerous on the developer or property owner with a full public variance hearing and process.

Commissioner Heckman asked at what place on the site the slope was determined?

Ms. Smith responded that the slope is determined from the top of the bank, full bank stage or two year storm event and it must be documented. To determine the slope you would have to

hire a surveyor which will increase cost. If Metro says if you want to mitigate any further than the 50 to 200 foot you would have to go through a variance process and the cost will go up. Those types of requirements increase the cost. We are trying to propose a simple process, a one-step process.

Chairman Maks asked if there is anywhere in the jurisdiction in Washington County regarding the 200 foot issue where there are slopes like that.

Ms. Smith responded that she had a map they could review which indicated in red where the steep slopes are located with areas that could be annexed including Golf Creek.

Commissioner Johansen asked regarding the mitigation that code requirements could be imposed but there is no ability or resources to enforce them. How would this be any different?

Ms. Smith answered that the committee needs to look harder at the details of implementation and have Metro review it, to meet substantial compliance. Enforcement is a question of community support. This process is suggesting that applications go through a Type 2 or 3 review process so that conditions can be placed on it and reviewed.

Chairman Maks responded that mitigation can be done wrong and there is a need to be sure it is done properly and investigated.

Commissioner Voytilla expressed that he has seen instances where the facility does not work and creates more pollution than benefit with lawsuits threatened because of the smell and contaminated water.

Ms. Smith responded that USA is aware of the issues and are discussing whether they are going to budget to fix these problems and get them functioning properly. They are also discussing more education and information to design engineers so they understand how to build them to function and discussion about upholding bonds. There is not enough follow up and enforcement.

Chairman Maks indicated that there is understanding about what is being discussed but the feeling is that without making sure it is done, done properly and with backing, they do not feel a table can be adopted.

The question was asked for an explanation of the USA position on variances and the table.

Ms. Smith responded that USA has the responsibility for implementing programs in the smaller cities. There are ten jurisdictions affected by this, Forest Grove, Durham, Sherwood and others that USA implements their water quality programs. They want a simple process from their standpoint and we are looking at it from a unified approach so we have the same standards. Washington County has a two-step process for review and development and you would be adding a third step to their process. You would be adding a two-step process for us. When

you talk to builders there is so much time tied up in getting approvals and this would add another leg to that. The Mayor asks that we try to simplify this.

Chairman Maks said that if they decided not to do this and instead follow Metro standards, it is clear that you have to be twenty-five, 50, 100 and 200 period. Is there a variance off of that?

Ms. Smith answered that we would have to establish a variance process in each jurisdiction and a variance code is basically a hardship variance.

Chairman Maks said that with the joining of applications, the variance could be heard at the same time as the application this would not necessarily mean another process. Even if the variance is a Type 2 and the hearing is a Type 3 the applicant can opt to take the 2 and 3 and be heard at the same time as a Type 3. I am missing the extra step. I see an extra application fee.

Ms. Smith said that there is the issue of the timing. The Metro staff is very much pleased with the restoration requirements that are being proposed as part of the package. One of the reasons for the restoration potential in the proposed approach is there are ways to modify site designs other than simple setbacks. The ability to modify site designs in a way that allow you to do extra things can lead to a better chance of restoring the closest in 25 feet. There is the issue of timing because adding the variance process can add more staff time to the review and add additional cost. It also opens the discussion to a public debate whether standards can be varied from without the alternatives of other ways of providing restoration. We need to provide some alternatives for restoration. The points are good in terms of follow up particularly with mitigation because it is an approach that requires more technical expertise. It requires monitoring and real commitment on the part of the jurisdictions undertaking it.

Chairman Maks said as a citizen involved in the neighborhood association in all different aspects you can find someone dumping nine bags of cement in a wetland and you can call the City, USA, Corps of Engineers and get no response and wait two weeks and get no response and no follow up. Then they want issues like this decided without any back up, code review or insurance that it will be done in the proper fashion. This is a little bit different than what we have been talking about but when you have something actually being done and you can't get any jurisdiction to step forward and tell you what you need to do to fix it, then there is a problem.

Ms. Smith responded that she did remember the concrete incident and thought it had been handled. She asked if lack of follow through is the primary concern.

Chairman Maks said the number one concern is the land that is left to develop is now borderline, along a creek bed, wetlands or something and there will be a lot of these type of requests. Chairman Maks indicated that the hope is the policy division will issue a density transfer code so they do not have to go through a CUP and a PUD to make it easier for the developer. Number two concern is what is being discussed at this meeting. The restoration area and the idea of enhancing and maintaining the tree canopy is good but if there is no enforcement, it means absolutely nothing. While there is understanding of the benefits of the

restoration and enhancement part, if there is no enforcement and no back up and one to two years later there is no way to make sure it is done right then maybe it is better off left as it is, wider. The builder could be gone one or two years later and there would be no way to enforce problems through them. If we leave it wider though it then affects density issues and our ability to place density and meet our density requirements. If we limit our ability to place density in these locations then we have to put the density somewhere else.

Ms. Turiel responded that is one of their concerns also. One idea is if you go with a straight buffer width, not only is it easier for staff to figure out how far it is once you get on the site, you also have something that is very clearly inviolate. It basically just sits there as an inviolate area and the developer does not have to "theoretically" worry about further degradation of that resource. Is that the thinking?

Chairman Maks said that is the thinking, but said that it is also a waste of land because there is not a lot of land available. In some cases though, the enhancement and additional canopy is wanted, but you also want to make sure it can be developed. Some of the applications coming in have areas delineated as a wetland when actually it is just a wet ditch. Briarwood is an example of a wet ditch. What a waste. We could not have built that project. That project barely scaled out and we filled some of the wetland, reasonable and feasible under USA standards. It never would have scaled out and the project would never have been completed under these standards.

Commission Voytilla said he agreed with the comments except the term in Item 2 for enforcement. The thing that is falling short is some sort of a periodic review. Everyone is genuinely concerned about water quality issues and sediment control if there is a reasonable return for what is being invested in money, effort and time. If two years down the road nothing is changing then what have we done? This is an expensive program. The staff time for review is going to be tremendous plus volunteer time like the commission. Where is the base line being used for the goal? Who is doing the monitoring? Who is determining if this is working or whether it is not? How do we get this information back to the people?

Chairman Maks said those were good questions because once something is adopted it is hard to stop and realize it is not working and go backward.

Commission Voytilla said that everyone knows the marginal lands within the boundary are being reached. He asked what the amount of property is that will need to be reviewed versus the post development condition that is already in place? His assessment is that there are very few properties that can develop due to other constraints that are going to be impacted by the vegetative corridor issues. He said the mitigation proposals are good ways to get some flexibility to work but in reality a lot of the water quality issues have been going on for a long time and they are far beyond the basins being discussed. A lot involve basins in the agricultural area. From a point of measurement, if it is Fanno Creek or Johnson Creek at Hart Road, that is one area. If it is the Tualatin River in Tigard that is a much bigger problem. It does involve a lot of stakeholders that are outside the metro area and they are not being contacted or restricted.

That problem is so big, the urban area cannot even begin to address correcting it. We are talking about a lot of money that is going to be thrown into this.

Chairman Maks asked if on the mitigation grid there were two or three things that were the goal in creating the grid, such as water quality, storm water retention, reduction of water velocity? If the important issues could be identified on the grid it could be built into the development application process without a variance.

Ms. Smith answered that what is being addressed in the Title 3 is water quality. What USA is trying to demonstrate is that it is not the 200 foot setback that gets water quality. You need to look at restoration, you need to provide options in terms of building green and give incentives to do that so that the amount of storm flow is reduced. We need to go back to the water quality facilities and restore them into working and functioning like a wetland. Metro has mixed and matched Goal 5 and Goal 6. It is mandatory in USA's approvals that the first twenty-five feet has to be enhanced if it is degraded and it has to be set aside as a separate tract. The incentive is to reduce taxes for that tract. They have allowed balance cut and fill. The storm water quality facilities are not consistently used outside of our jurisdiction. They are mandatory in this jurisdiction. What we are looking at is other elements that can buffer areas which reduce temperature.

Chairman Maks said he was won over with that statement. There are areas where you could have a 500 foot setback and water quality is still not improved unless you plant trees along the bank to maintain temperature. The problem though is how to do it.

Ms. Smith said Metro failed to make a nexus for restoration.

Ms. Turiel said to help focus the discussion she thought the question is if there are possible mitigations that would be low maintenance and would not require a lot of ongoing monitoring to make sure they are working versus ongoing maintenance. Is that the issue?

Chairman Maks said if there are going to go to the credit table they like the enhancement of the degraded corridors, tree preservation, but need more information on the two-to-one credit on the roof area disconnect for storm water. The eco roof or roof garden presents a real problem.

Ms. Smith said this is just to reduce the setback. There is a slide show that has gone around. In Europe it is becoming very common. There are some great slides of Europe of green roofs and they are working.

Chairman Maks said maybe we should bring the developers from Europe over here so we can make sure they are done. The eco roof or roof garden is a semi-problem and the tilled and amended landscaped areas. The basis behind that is reducing the impervious surface is that right or reducing the flash runoff? I can plant half my roof with a garden so I can get some credit and do a real poor job of it. Just dig it out of the back yard and put it up there so it is clay and in a normal rainstorm it will work for about five or ten minutes and then it will run off with more sediment.

Ms. Smith said the interesting thing about what is being proposed is if it is put into the standards it could apply outside the riparian area. These types of developments could occur anywhere.

Chairman Maks indicated there was a question on the tilled and amended landscape areas.

Ms. Smith said she would explain that. In the report is an abstract. It talks about unamended soils. They did a study where they actually tilled the soils and had 40% reduction in runoff. So they are recommending that if you amend the soils and till it with compost at one foot depth, you will have retention of storm water on the property.

Commissioner Heckman asked what would happen when the wood fiber rots out?

Ms. Turiel said it gets replaced. The issue about how many of these are low or no maintenance and how many are ongoing requirements for the property owners. When I was an administrator on the coast we had a lot of sand filtrations and they work really well as long as you maintain them. I am hearing about degradation of existing resources whether or not there is a setback. Even if there is a good substantial setback, if people are going out and dumping bags of concrete in it then it is not going to help any. We have an issue that has to do with monitoring and maintenance and an issue about what is going to be affected that we can put on the back burner and keep it going.

Chairman Maks said that over a period of time it might be dug up and something else put in. Who is responsible if you build a subdivision, get some kind of a 3-to-1 credit based on this one, and someone goes around and you have two homes that dig it up and bring in clay or do something that completely subverts what was done here? It is their property. Who tells them they cannot do that and who backs it up what, CCR's? They are enforced civilly? Deed restrictions you get after you have bought the house with the title report? If we are going to adopt a table, I question what is in the table. Then we move on to the landscape open space area, no the pervious pavement. Is that only allowed in pedestrian ways and patios?

Ms. Smith said typically the semi-permeable pavers are used in secondary parking areas such as overflow parking. These are standard shopping center requirements that design the parking lot for two days a year and most of these receive asphalt and the secondary area where there is minimal parking have paver blocks. Pedestrian ways are not very popular for pavers because especially women who wear heels.

Chairman Maks said number one question again is who is going to enforce 20 years down the road that they pave that? Number two, with regard to water quality, understanding the reduction of the impervious surface, if there are cars driving over it, leaking oil, or sitting on it, what kind of water is going to come out? How does this help the water quality because this is more pollutant.

Ms. Smith said the alternative is oil dripping on the driveway runs into the storm drain.

Chairman Maks said or it is held in a storm water facility which is an advantage over pavers reducing it, and a not adequate storm water facility.

Ms. Smith said that over the summer it accumulates and with the first heavy rain it immediately flushes to the stream.

Chairman Maks said we are getting a 3-to-1 credit for this and there are problems here.

Ms. Smith said the pavers are very good in holding the pollutants. A large setback is supposed to take the local surface runoff. The reason the pavers blocks are not continuous parking, they are usually secondary parking, is that you are trying to keep grass growing in between. You are trying to keep vegetation mixed in with the pavers so they are a part of the landscaping design. The vegetation and the sand in the pavers holds the pollutants and allows it to filter. It does not normally hit anything but the subsurface water table so you do not get an extreme amount of pollution from these types of installations. They are relatively good filtration devices because they tend to hold it and keep it from getting flushed into streams.

Chairman Maks said they had an entire path along a previous house. 2x4's 3 1/2 inches with pavers and rock and they were tightly knit and water ran through it like a sieve and down the slope. There are advantageous with the flash and the impervious surface but there is a question about the 3-to-1 credit. Maybe it is a one to one credit or a two-to-one credit.

Ms. Smith said these are the kinds of comments we need so that we can go back and take another look at this.

Commissioner Voytilla asked if there is some scientific or engineering component to these numbers that make sense based on what we are being told or are they just arbitrary?

Ms. Smith said these are a best guess estimates from Lori Faha. That is why it was emphasized in the staff report that the ratios needed to be looked at. Mike Houck looked at the ratios and you have that information so you have some basis for comparison. In trying to get things implemented and on the table for discussion, the committee did not have the time to fine tune and they are open for negotiation. There is a need to substantiate them.

Commissioner Voytilla asked if there had not been people from the engineering community monitoring these types of things providing input to the committee? Ms. Smith said that there were some engineers but she did not know what level of review they had.

Commissioner Voytilla said they would be more comfortable working with a professional opinion of someone like that rather than the commission just picking something. Ms. Smith said that Lori Faha, Jim Douglas and John Rieman are all engineers and they were on the committee.

Chairman Maks said Box 1 and 2 of the enhancement and degraded corridor areas and the landscape open space area with native plants were good ideas. The tree preservation might need to be more than one-to-one.

Commissioner Voytilla said there was something mentioned about a tax credit regarding a separate tract. How would that work because real estate tax is based on market value? We are dealing with a tract that would have no reasonable buyer in mind to buy it since it cannot be developed. It is in a neutral state so how could it be offered? Ms. Smith said the property owner is required by USA standards to set the buffer area aside in a separate tract which cannot be developed. Because it is a separate tract and cannot be developed, its tax assessment would be reduced. Commissioner Voytilla said that could be appealed because the property would have no market value and questioned how that could be an incentive. Ms. Smith said because the rest of the property is developable. Commissioner Voytilla said he was talking about only the tract being set aside for no developable use. It has a restriction on it. What market value would it have with no developable value? Ms. Smith said that all land has value. It has value even if it just sits with trees on it but it is not assessed at the same market value as a developable parcel for residential or whatever the current zoning is. Commissioner Voytilla said that most of those properties get a zero value as a result. Ms. Smith said that was possible. Most have a very small value.

Ms. Turiel said the point Ms. Smith was making is that because USA standards require the separation of environmental lands into separate tracts it facilitates the land that is not useable being assessed as not useable. The way they used to plat subdivisions you might have had a stream and a subdivision with an area that was completely unusable along the stream corridor. People would have an acre and a half lot with only the acre up front that was usable but the whole thing would be under one tax code so the entire parcel was considered one tract of land. When it was tracked out for a water quality facility as a separate facility, it facilitated the assessor to not count it in with the adjacent properties as potentially developable and that is the benefit to the adjacent property owners. Property that is not usable has been separated out and not taxed at any kind of a tax rate.

Commissioner Voytilla indicated that when you create a tract it looks like a separated piece of property that would not have an ownership. Are you then contemplating that these facilities be publicly owned or dedicated to the public and publicly maintained or would they be privately held?

Ms. Smith said that is at the option of the property owner. The incentive is there for them to donate it and some do so, then it becomes public use. That is how a lot of the green spaces have been acquired. USA has encouraged that. The question is then who maintains it? In our case it is Park and Rec.

Commissioner Voytilla, to get back to the restoration question in the separately set aside tracts, if you set it aside into public ownership and subsequently determine that whatever restoration efforts were made did not work then who is responsible for it? Ms. Smith said that if it in public ownership there are a lot of groups like Friends of Fanno Creek who will work on restoration. Citizens can become involved in restoration.

Commissioner Heckman said he was responding to Commissioner Voytilla's comments regarding tracts of land that are not usable. In the tract where he lives there is a lot of significant natural resource area. When people purchase the property they do not understand why they have to pay taxes on the 30 feet of land around their house but they cannot pull the weeds, or build a fence within 33 feet of the boundary of their property. It is a difficult thing for people to understand. People do go in and build things and the enforcement division says they are too busy to do anything about it. It carries over into the same situation. I am more concerned about how you are going to do it if you cannot enforce it. It looks good on paper but the reality is how to make it work?

Chairman Maks asked if they could allow some of these to apply in the same fashion that other things are allowed to apply such as parking reduction ratios. Ten percent is knocked off for something or five percent is knocked off for something else. Can they pick 1,2,3,4 of these? If they can, I have a problem with that too. While I might support one or another at times, with parking reduction standards because of certain reasons it is on a case-by-case basis.

Ms. Smith said there is a minimum reduction that is allowed and that is down to 50% within a 200 foot setback and no less than 30 feet on the 50 foot setback. No matter what matrix is put together to make it work, there is still a minimum encroachment.

Chairman Maks said that was a good answer.

Commissioner Voytilla said if it was 30 feet across a particular length of the corridor, applying all the reductions hypothetically could you get into a situation where it was 30 feet across the entire corridor because you managed to qualify for the reduction? Is it both the reduction term 30% and then also the length of the corridor?

Ms. Smith said the way it works is for the 50 foot corridor width there was no proposal to apply the credit table. Where 50 feet applies and it is less than 25% you can do averaging which would allow you to encroach up to 30 feet for 25% of the corridor and then you have to widen the buffer elsewhere to make up for that. It is only up to the 200 foot minimum width with steep slopes where this credit table would apply. The credit table would allow you to encroach 50%. If it was a 200 foot minimum buffer you were to have provided under Title 3, you could go as narrow as 100 feet for the entire length of the corridor. If it was less than that, 100 feet is the minimum under Title 3 for a steep slope, you could only go 50 feet using the credit table. I am not sure how the averaging would work.

Chairman Maks said then it is also up for grabs on what the credit table applies to. It does not apply to the 50 foot. You can make it apply to the 200 foot which is a great idea. What is the minimum on 100 foot, 50 feet? Ms. Smith said the way the credit table would work is that you could never get closer than 50 feet on a steep slope. On a non-steep slope the proposal is to use the Title 3 buffer widths.

Chairman Maks said, so bottom line is that you can use these in conjunction but you cannot exceed the 50% basic issue. If it was written right but the problem we have had at times with

parking reduction standards is there is 10% for this and 5% for this and staff approves a little shelter and gives 10% deduction even though the code says that it may not be given. But staff just gives it and that is where we have a problem sometimes where you get this given automatically and this given automatically and then we start wondering why the parking is backing up into the neighborhood. It also depends on the way it is written. On a 200 foot spread I would like to see all the stuff done including the trees, canopy, etc.

Commissioner Wolch said it seems the 200 feet is so onerous and needs some kind of method to adjust it.

Chairman Maks said also the 100 too.

Ms. Smith said when you talk about the setback, it is either the 15 for the intermittent streams which basically USA standards covers at 25. You have a 50 foot setback or a 200, and that depends on slope equal or greater than 25% slope puts you up to the 200 foot setback. If you break in the slope anywhere along before you reach the 200 foot you have to consider that the measurement is straight up and measuring out 200 feet. If you have a break before that you have to consider where the break falls and if you are under 200 feet and you have the break at 150 feet you still would go back another 50 feet. If you are straight up at 200 feet that is where your footing would go if the slope never breaks. In most cases you will have slopes that vary and take into consideration that it requires a survey from three different points in order to determine what that slope is.

Brenda Bernards, Senior Planner, Metro Growth Management Services, said if you look at the bottom drawing you measure the first 50 feet from the top of the bank and if there is a slope that is greater than 25% then the larger buffer widths apply but if that was to end after 50 feet, then you would only have to add another 50 feet so that would be 100 feet. On a steep slope the minimum requirement would be 100 feet and it could vary up to 200 feet and 200 feet would be the largest minimum requirement.

Chairman Maks said so there could be a 100 foot setback and they could go for a 50% reduction. Now that we are getting all of what this applies to, I am not sure about the roof garden but the grid on the 200 foot I think we can do more good with all the enhancement things than just 200 feet.

Ms. Smith said particularly when the current standard is 25 feet and we are moving to a 200 foot setback. This is Title 3 water quality.

Commissioner Voytilla said that as he was looking at the chart he noticed the tie into acreage within the drainage basin. Given the fact that a lot of the properties are marginal lands or fill, what happens in a scenario when you are downstream from an existing development and you are taking the brunt in the drainage basin of 100+ acres. Is the single property owner responsible for the mitigation for a much larger area or is there some sort of an effort to take care of the burden of that to offset some of their costs. How is that going to work? Ms. Smith said she did not have an answer for that.

Commissioner Voytilla said that if the property is downstream from a much larger drainage basin and the drainage basin is developed what is the responsibility of the property owner? Do they just deal with their property and we are back to the situation of how much of this can we realistically do?

Commissioner Wolch said somebody bought a house drained with a dry well which over the years no longer worked so he had drainage problems from day one. Finally the solution was to put in drainage and bring the water out to the street. During the very high floods we had the water level came up to the floor. In light of what Chairman Maks said, is the answer to collect the drainage water and treat it somehow where it is clear where the responsibility lies to do that or is that just so impractical? Can we treat storm water like we do sewage or is that something that is just not feasible to do?

Chairman Maks said that staff is trying to address that from all kinds of different angles and also reducing the amount. Ms. Smith said the question goes to what happens when the soil is saturated and there is no place for it to go.

Commissioner Wolch said it is thrown on the property owner to solve the problem and it seems like that is the default by saying to get it into the public system. It sounds like we are trying to avoid it getting there in the first place.

Chairman Maks said there was also a concern about the combination of these if something gets missed somewhere along the line. There are roof drains, pavers, the downspout is disconnected and find out that what was supposed to hold for six months or whatever it is does not work.

Ms. Smith said that there is a development that was permitted by USA. The whole subdivision was designed with a drainage system. The storm drains were disconnected and drained into a cistern. In the process of developing the PUD they had a common area that they set aside and they used the water for irrigation in the summer time. They had no run off, total containment. Those are the types of things we could encourage through incentives like this and with a reduction in USA's fees. These options are something that could be looked at in terms of education. One of things that we are trying to encourage when talking to various groups is to build a Street of Green in addition to a Street of Dreams to demonstrate some of these projects.

Commissioner Voytilla said that the idea of draining into cisterns is an old idea. A Commissioner said a house that was built in 1898 had a huge cistern and in the summer time the water was used to irrigate the lawn and garden. It is not a new idea and it is practical but not on an individual basis today.

Commissioner Wolch said he thought the documents are very well prepared and well organized. I think a policy would we like to see generally speaking about ultimately who maintains these would be a good one. Should they be publicly dedicated and maintained responsibly or privately and run the risk of whether or not it is functioning properly He stated he thought we are starting to really push the bubble of what are legal issues. There are problems in creating

these spaces and they are an attractive nuisance. A child gets in there and is hurt or worse, there has been fatalities from these types of things, so he did not think they should create something when they have not thought about all these issues. The legal things really should be looked at. Maybe we should look at conservation easements as opposed to just someone having a deed restriction on their property. Something that allows public inspection and public access for monitoring and maintaining. It might be something that we really need to look at from that standpoint. He agreed with Commissioner Heckman with such smaller properties now it is difficult to propose a PUD and do some of the things we have discussed on a master type plan basis. It takes municipal planners to do that and engineers. Perhaps we can identify where a big drainage basin is, look where an area is where we can do a substantial water quality feature and implement something that way.

Chairman Maks said this is one of the subjects you discuss and something else comes up. Does it make any difference if he was talking about a stream and you allow credits in one section of the stream and nothing is done in another section. For instance the 100 foot issue, you end up with a 100 foot required by the Metro standard. One property owner across four acres or three acres along that stream bed or wetland area opts just to leave 100 feet and the other property owner upstream does mitigation, puts in trees, canopy to maintain temperature, etc., have we accomplished anything if the temperature is maintained in a two mile stretch when the next two miles went the other way. In Nebraska the water quality issue from farm to farm is a huge issue. I am convinced we are better off not going with Metro cut and dried. We are better off doing this in some fashion.

Commissioner Voytilla said he had a comment regarding Mr. Houck's comments. He is at such a variance from what is recommended and he speaks quite knowledgeably. Why is he saying 10-to-1 or no credit when you have been talking 2-to-1 and 3-to-1. Is he off base or is there medium ground in between?

Ms. Smith said Mike's perspective is no mitigation at all. He wants to see an adoption of straight 50 to 200 foot buffers. He has been very vocal about that all through Metro. If he were to look at that, the one thing he does like about the recommendations is that there is restoration for the first 25 feet. If that means we can allow for some encroachment in the area he would then support the idea. His numbers are to limit encroachment as much as possible.

Chairman Maks asked how he feels about the tree canopy issue. It has been proven over and over again and is a huge issue with regard to water quality.

Ms. Smith said she did not choose to get in a debate with Mike over the issue. She said she wanted to discuss wetlands that was provided in the memo from Elaine. When we address Title 3, wetlands has been glossed over mainly because with Goal 5 if there are identified fish you have to honor the 50 foot setback. If there are not USA standards would apply as a 25 foot and that is where they are currently. This is also what the committee has recommended that the 25 foot is kept for those areas that are minor wetlands or recently identified minor wetlands.

Chairman Maks asked if that is the average of 25 feet or 25 feet?

Ms. Smith said it is the buffer width averaging.

Chairman Maks said the buffer width averaging is not acceptable it should just be 25 feet.

Commissioner Voytilla said by reducing it down you increase the risk of increased velocity in the water flow.

Chairman Maks said they are not supposed to change the water level.

Commissioner Voytilla said if you get a bad storm you are going to.

Chairman Maks said if you want to hold to the 25 foot versus the 50 foot that is fine but the 25 foot should be 25 feet minimum not an average. We have had applications we had to approve because it is part of the code where we were down to 16 feet in one area.

Ms. Smith said she had talked to Ms. Fryer about this and one of the thoughts was that if it is draining less than 100 acres go with 25 feet. If it is greater than 100 acres, 50 foot setback. In most cases in the small wetlands they are often disconnected and have very little drainage. You will look at a criteria that says if it is less than 100 acres then you would require a 25 foot setback.

Chairman Maks asked what the difference is.

Ms. Smith said it is Metro's rule of thumb and how they address the intermittent and perennial streams.

Chairman Maks asked if there are any streams on the Petercourt property?

Ms. Bernards said when new wetlands are discovered there is a criteria in Title 3 that would have it included in the map. When we saw the piece in the recommended approach for the cities of Washington County we weren't sure if it was extra protection for wetlands that would not have made it on the Title 3 map or were in Goal 5 inventory. We were not clear if it was not on the map now, would it ever be on the map. There are some criteria that would put it on the map and one of the criteria is draining 100 acres or more. If that was the cut off point then it would be in compliance with the functional plan and we would be getting the protection we want on the wetlands.

Ms. Smith said there was discussion with the committee and we are not that far out of compliance. It is just how to implement and look at the nuances of the mitigation table and what we want USA to adopt. One of the things talked about in the committee was a clearing code. Some of these things got thrown in at the last where we said we needed to address these and there may be some discussion in the future about clearing code and demonstrate how we would implement the mitigation table through a Type 2 or 3. John Jacks, Lori Faha and I got a heads up and an opportunity to go to Metro to talk to the growth management committee Council.

They had on their agenda our compliance package. We got an opportunity to talk to them about this. They had also had an opportunity to review Elaine's letter. One of the things the Council and the Metro staff is not understanding is how we would implement this mitigation table. We talked about a variance process. Brenda can talk about what Metro's requirements are because Elaine mentions a section in the code that needs to be applied if you are going to mitigate. She actually calls it out in her letter. We need to take a look at it. In determining appropriate conditions of approval the affected City or County shall require the applicant to demonstrate there is no reasonably practical alternative design or method of development that exists that would have a lesser impact on the water quality resource area than the proposed one. It has a couple other parts to it as to how you would then have to do certain steps in order to mitigate. In other words, in order to get the variance you would have to demonstrate no reasonably practicable alternative design method is available as Step 1. These are really onerous requirements to get through a variance process. What we are proposing is something different than that. That is, where the concern is that there would be no review process to do that. What we are proposing is that we have a process such as a Type 2 or 3 review process where there would be notice, public comment and a Type 3 public hearing. The concern would be that if we did that we would want USA to look at all of the ten jurisdictions to be sure that if we had a mitigation table and these are the options are we all implementing the same. Are they going to be ministerial or would they be at the same level of review with all the counties going through the same process in applying these standards?

Chairman Maks said this is the Metro cookie cutter approach. Who says it has to be processed in the same fashion?

Ms. Smith said it means a review process that requires notice.

Chairman Maks said they do not care. A Type 2 is completely different from a Type 3. We have development applications in other jurisdictions that are Type 2 that in this City would be Type 3 and vice versa. It is what this City feels the process and the application should be and it depends on how the City places this issue within the list of priorities. There was a recent council meeting in Lake Oswego regarding a rezone. Basically Council admitted that their comprehensive plan is not friendly to business but that is the way their plan is for a reason and that was their option. It is the same thing here. It may need to be a Type 3 because you need to tell the public why you are doing what you are doing. Five or six years down the road you need to be sure you have the opportunity, because a Type 3 usually has broader notice, and someone will come in and say you have to watch the pavers because in three years they do not work. That is what you get out of a Type 3. Do not tie this to the way that applications are done in other jurisdictions.

Ms. Smith said the suggestion came from higher up.

Chairman Maks said there is an understanding behind the reasoning so a developer could say this is the same throughout every jurisdiction. But it is not that way right now on a lot of different things.

Commissioner Voytilla said he thought two things were being talked about how it is processed and consistency of the mitigation standards from one jurisdiction to the next.

Ms. Smith said it would be a two step process. If the mitigation tables in USA standards and the ratios are the same the options are all there and someone can pick and choose then there is consistency as to how they are applied. The process in terms of Metro wanting to have substantial compliance is if we are circumventing a variance process that is very onerous. We outlined some criteria that would need to be looked at to even begin to apply for a variance. We are suggesting that it would be consistent and there would be a review process which is what a variance gets you, participation from the public to see what is happening. They want that level of review because they feel that is what is important in this process.

Chairman Maks said that some of what was just illustrated is lacking at times in Type 2. It is actually up to the Commission, the policy makers and the Council whether it is a Type 2 or a Type 3. It is how the constituency feels about wetlands and tree canopies.

Ms. Smith said this is a recommendation coming from Mr. Grillo. The consideration is that between here and Washington County in the urban area is there competition and is there is a need for consistency in policies.

Chairman Maks said that Washington County does not have a tree preservation ordinance. So are we going to do away with ours? A visit was made with the special planning commission in an area that was within what is being heard and was amazed to find out the trees were not identified in any fashion and were not protected in any fashion because there was no tree preservation plan. Are we going to do away with ours to be consistent? The citizens would probably not care for that.

Ms. Smith said that maybe they are being overly optimistic, but the hope is that by trying to encourage a similar level of review throughout the counties that we would not sink to the lowest common denominator. The overall desire to protect the basin would win out. We have the alternatives as recommended in the staff report. It is just the part where USA and the committee has put together and we have reviewed it and we would probably send favorable reports to City Council as to the review of this rather than just to say it is not wanted, but it is an alternative. The other alternative would be to adopt the map system to go with an overlay. Early on when we had the first work session that option was discussed and it was decided that idea would not be supported.

Chairman Maks said he likes the direction of USA and the goal behind it and the mitigation table but he is not sure he agrees with all the methods of mitigation. He thinks it needs a lot more research with regard to two-to-one, 3-to-1, do you need to watch the rocks, etc. He likes the direction but feels there is more work to be done to determine if this will work, to what degree, and if it should all be included. The bottom line is if there is nothing coupled with this in regard to making sure it is done right and follow up then we are better off with the 200 foot, 100 foot, 50 foot because it is assured that will happen. You can do all these things and if there is no enforcement mechanism there is no way to know that it will happen.

Commission Heckman indicated his agreement and said that going out 200 feet is far too rigid but it is a target even if it is wrong. But what is the rationale and reasoning for 3-to-1 and 2-to-1, 1-to-1. What data backs up these numbers? The idea is great but until there is a reason for these numbers he cannot support it. He supports the concept but not the numbers as given. It is grand to have all of it but how is it going to be enforced? The idea that variances do not have to be enforced if rigid lines are set is not good either. We need more work.

Commissioner Johansen said he primarily agreed with the Chairman. The mitigation is dead on arrival without an absolute commitment from Council or whoever has to make the commitment to fund it. If there is not a very clear plan on how the enforcement side of this is going to work, mitigation is not something that can be done. It is a very innovative planning approach and in government and elsewhere simplicity is always a benefit. This is an innovative introduction but it is not simple and without a clear funding policy for how it will work, it will not work. There is also another big policy issue behind this and that is who is going to pay for the additional enforcement? Is this a general fund cost in a Measure 50 environment where there are difficulties in providing the current services or will it be passed to the development side? The restoration requirements are great. The mitigation program is absolutely dependent upon adequate funding.

Commissioner Wolch said he is in agreement and agrees with the overall direction. He feels he lacks the technical expertise to make judgments about mitigation ratios and it should be left to people in that business. He is concerned about the implementation and the follow up and how it will work in practice rather than being a process that fails in the end.

Commissioner Voytilla said he agrees with the comments. He thinks it is a great idea as far addressing the requirements that Metro is placing on the area but there is a big concern about the property by property, development by development implementation of this and if there would be an accumulative affect that would be beneficial. A lot of water quality issues stem from when the area was first settled. Literally 100 plus years of an accumulative problem. With the emphasis on end fill but more importantly perhaps redevelopment how is it to be addressed perhaps as a policy a property that has a stream which has been culverted. Is it going to be required that be opened up? That also could be a benefit for water quality as a result of the fact that it is currently closed off and not open to the environment to provide the necessary elements to properly treat that water. There are a lot of issues still unresolved but this is a good step. He said he appreciates the fact that they are trying to go for a uniform standard through all the jurisdictions and it is the best way to make it work but we still need to see some emphasis in the master planning or identifying some sites where we could look at some grander water quality features on a larger scale so the smaller properties are going to be hit with a tremendous impact as far as trying to meet the objectives of this and perhaps cannot. This will be a big problem. Rather than using the word enforcement it should be more monitoring of it and using it as a learning experiment. This is a science that no consultant will categorically say this will work. It is all good intent but they are all learning too so if we can have that information base come back even to the public planners and engineers so they know what we are regulating and educate this body better so we know what we need to be reviewing it would be a tremendous benefit. If it

is not worth what is being invested we should be realistic and look for a different way. With all the great documents if it is not substantially changing things because of all the other conditions outside of this area this is too much expense and how do we come up with those resources.

Chairman Maks said he would like to thank staff for the staff report which was well done and well written. All the time that was put into meetings with all the stakeholders was a painstaking process and staff should be given a lot of credit for that.

Commissioner Heckman asked if anyone had read the article in the Oregonian about the Hudson River clean up. The PCBs are down to a level they can live with and they want to go in 180 miles above New York City and start dredging. That is a bit of a corollary to here. Before we start doing anything let's know exactly what we are doing first.

Chairman Maks thanked the staff.

Approval of Minutes

The Minutes for June 23, 1999, were approved as presented.

It was stated that a recorder needs to be at the meetings.

ADJOURNMENT: 9:08 p.m.